

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CIVIL APPLICATION No. 3970 of 1997****For Approval and Signature:****HON'BLE MR JUSTICE KS JHAVERI**

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- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?
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LIFE INSURANCE OF CORPORATION OF INDIA - Petitioner(s)**Versus****MAHENDRABHAI G MANIAR - Respondent(s)****Appearance :**

MR AK CLERK for Petitioner No(s).: 1.
 MR BD KARIA for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI**Date : 20/07/2005****ORAL JUDGMENT**

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1. This petition is directed against the order dated 7th May, 1997 passed by the Labour Court, Bhavnagar in Recovery Application No. 1 of 1996 whereby the said application was allowed.

2. The short facts of the case are that the respondent was working as a Development Officer with the petitioner Corporation. Since the respondent failed to fulfill his business quota as Development Officer, a show cause notice dated 22nd February, 1991 was issued to him as to why his services should not be terminated. Thereafter ultimately, his services were terminated w.e.f. 3rd July, 1991. However, the termination order was stayed by the Trial Court and thereafter by the Appellate Court. It is the case of the petitioner that the District Court vide order dated 30th November, 1994 vacated the said stay order and ultimately the services of the respondent came to an end w.e.f. 22nd December, 1994.

2.1. Pursuant to that the respondent under Section 33 (C) (2) of the Industrial Disputes Act, 1947 preferred Recovery Application being Recovery Application No. 1 of 1996 before the Labour Court for recovering the amount towards leave encashment. The Labour Court after appreciating the materials produced before it, passed the impugned order. Hence, this petition.

3. Mr. Clerk learned counsel for the petitioner has contended that the Labour Court has erred in ignoring the

fact that it had no jurisdiction to entertain the Recovery Application as the respondent herein is not the "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

3.1. In support of his contention Mr. Clerk has relied upon the decision of the Apex Court in the case of **H.R. Adyanthaya v. Sandoz (India) Ltd. Reported in A.I.R. 1994 S.C. p. 2608**, wherein the Apex Court has held as under :-

"..... In S.K. Verma v. Mahesh Chandra , (1983) 3 SCR 799: [AIR 1984 SC 1462] the dispute was whether Development Officers of the Life Insurance Corporation of India (LIC) were workmen. The dispute arose on account of the dismissal of the appellant - Development Officer w.e.f. 8th February, 1969. The Court noticed that the change in the definition of workman brought about by the Amending Act 36 of 1956, which, as stated above, added to the originally enacted definition, two more categories of employees, viz., those doing "supervisory" and "technical" work.

We are afraid that these contentions are well placed. We have already pointed out as to why the word "skilled" would not include the kind of work done by the sales promotion employees. For the very same reason the word "operational" would also not include the said work. To hold that everyone who is connected with any operation of manufacturers or sales is

a workman would render the categorization of the different types of work mentioned in the main part of the definition meaningless and redundant. The interpretation suggested would in effect mean that all employees of the establishment other than those expressly excepted in the definition are the workmen within the said meaning of the definition. The interpretation was especially rejected by this Court in *May*, and *Baker* [AIR 1967 SC 678], *WIMCO* [AIR 1964, SC 472], *Burmah Shell & A Sundarambal* [AIR 1988 SC 1700] cases (Supra). Although such an interpretation was given in *S.K. Verma* [AIR 1984 SC 1462], *Delton Cables* [AIR 1984 SC 914] and *Ciba Geigy* [AIR 1985 SC 985] Cases (supra), the legislature impliedly did not accept the said interpretation as is evident from the fact that instead of amending the definition of the "workman" on the lines interpreted in the said latter cases, the legislature added three specific categories, viz., unskilled, skilled & operational. The "unskilled" and "skilled" were divorced from the "manual" and were made independent categories. If the interpretation suggested was accepted by the legislature, nothing would have been easier than to amend the definition of "workman" by stating that any person employed in connection with any operation of the Establishment other than those specifically excepted is a workman. It must further be remembered that the independent categories of "unskilled" "skilled" & "operational" were added to the main part of the definition after the SPE Act was placed on the statute book. The reliance placed on the aforesaid observations in *Kasturi and Sons* case [AIR 1958 SC 507] (supra) is also not correct. In that case, the Court was

considering the question whether Section 17 of the Working journalists (Conditions of Service) & Misc. Provisions Act, 1955 empowered the authorities specified by it to adjudicate upon the merits of the claim made by a newspaper employee against his employer under any of the provisions of that Act. "

5. I have heard the learned counsel for the parties and have perused the materials produced on record. In view of the aforesaid decision, it is clear that the Labour Court while entertaining the application has travelled beyond the jurisdiction inasmuch as the respondent was not a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act. Hence, on this sole ground, the impugned order is required to be quashed and set aside.

6. In the premises aforesaid, the petition is allowed. The order dated 7th May, 1997 passed by the Labour Court, Bhavnagar in Recovery Application No. 1 of 1996 is quashed and set aside. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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